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United States of America

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.

ANTONIO MENDOZA RAMOS,  
LEOPOLDO GONZALEZ, JR.,  
VICTOR MANUEL VELAZQUEZ,  
ERASMO ZARATE SOLORZANO,  
ESTELA ACEVEDO,  
CARLOS CANO MANZO,  
DIANA CERVANTES,  
JOSE GENARO VARGAS-RAMIREZ,  
ALMA ADRIANA MORA MADRIGAL,  
ALEJANDRO MORA MADRIGAL,  
FERNANDO CARDENAS, AND  
HUMBERTO PIMENTEL CARANZA,

Defendants.

CASE NO. 21-CR-109-DAD

STIPULATION REGARDING EXCLUDABLE  
TIME PERIODS UNDER SPEEDY TRIAL ACT;  
ORDER

CURRENT DATE: September 20, 2022  
PROPOSED DATE: December 13, 2022  
COURT: Hon. Dale A. Drozd

**BACKGROUND**

This case was set for status conference on September 19, 2022, and time had been excluded through that date. Dkt. 140. On August 25, 2022, this case was reassigned from the Honorable Chief Judge Kimberly J. Mueller to the Honorable United States District Judge Dale A. Drozd. Dkt. 142. Consequently, the status conference was continued one day, to September 20, 2022. Dkt. 144. Time was not excluded for that one-day continuance.

1 On May 26, 2021, this Court issued General Order 631, which reopened the courthouses in this  
 2 District, but which left it to “each Judge [to] determine whether to hold proceedings . . . in person or by  
 3 telephone or videoconference.” The order further authorized each Judge to “exercise his or her authority  
 4 to continue [criminal] matters” and “exclud[e] time under the Speedy Trial Act.” This and previous  
 5 General Orders were entered to address public health concerns related to COVID-19.

6 Although the General Orders address the district-wide health concern, the Supreme Court has  
 7 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive  
 8 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.  
 9 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no  
 10 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at  
 11 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a  
 12 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally  
 13 or in writing”).

14 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory  
 15 and inexcusable—General Orders 611, 612, 617, 618, and other orders require specific supplementation.  
 16 Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of  
 17 his findings that the ends of justice served by taking such action outweigh the best interest of the public  
 18 and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is  
 19 excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or  
 20 finding that the ends of justice served by the granting of such continuance outweigh the best interests of  
 21 the public and the defendant in a speedy trial.” *Id.*

22 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code  
 23 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,  
 24 natural disasters, or other emergencies, this Court has discretion to order a continuance in such  
 25 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance  
 26 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court  
 27 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*  
 28 *also United States v. Correa*, 182 F. Supp. 2d 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time

1 following the September 11, 2001, terrorist attacks and the resultant public emergency).

2 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt  
 3 proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-  
 4 exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act  
 5 continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, 21 F.4th 1036, 1046  
 6 (9th Cir. 2022). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2)  
 7 how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since  
 8 the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly  
 9 susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant  
 10 faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason  
 11 to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district  
 12 court has the ability to safely conduct a trial. *Id.*

13 In light of the foregoing, this Court should consider the following case-specific facts in finding  
 14 excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7)  
 15 (Local Code T4).<sup>1</sup> If continued, this Court should designate a new date for the status conference.  
 16 *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be  
 17 “specifically limited in time”).

## 18 STIPULATION

19 Plaintiff United States of America, by and through its counsel of record, and defendant  
 20 LEOPOLDO GONZALEZ, JR. by and through his counsel of record, Ryan Roth, defendant VICTOR  
 21 MANUEL VELAZQUEZ, by and through his counsel of record, Kelly Babineau, defendant ERASMO  
 22 ZARATE SOLORZANO, by and through his counsel of record, Etan Zaitsu, defendant ESTELA  
 23 ACEVEDO, by and through her counsel of record, Clemente M. Jimenez, defendant DIANA  
 24 CERVANTES, by and through her counsel of record, Jennifer Mouzis, defendant JOSE GENARO  
 25 VARGAS-RAMIREZ, by and through his counsel of record, DINA LEE SANTOS, defendant ALMA  
 26 ADRIANA MORA MADRIGAL, by and through her counsel of record, Christina Ann-Marie

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27 <sup>1</sup> The parties note that General Order 612 acknowledges that a district judge may make  
 28 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.  
 Cal. March 18, 2020).

1 Diedoardo, defendant HUMBERTO PIMENTEL CARANZA, by and through his counsel of record,  
2 Jesse Garcia, and defendant FERNANDO CARDENAS, by and through his counsel of record, Tasha  
3 Chalfant, hereby stipulate as follows:

4 1. By previous order, this matter was set for status conference on September 19, 2022, and  
5 then continued without time exclusion to September 20, 2022.

6 2. By this stipulation, defendants now move to continue the status conference until  
7 December 13, 2022, at 9:30 AM and to exclude time between September 19, 2022, and December 13,  
8 2022, under 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4].

9 3. The parties agree and stipulate, and request that the Court find the following:

10 a) The government has produced over 100,000 pages of discovery and voluminous  
11 audio and audio/video discovery, including interceptions over multiple wiretapped telephones as  
12 well as recordings of controlled purchases of narcotics. Many of the recordings are in Spanish.

13 b) Counsel for defendants' desire additional time to consult with their clients, review  
14 the current charges, conduct investigations and research related to the charges, review discovery,  
15 discuss potential resolutions, prepare pretrial motions, and otherwise prepare for trial.

16 c) Additionally, given the voluminous discovery and the fact that this case involved  
17 a multi-line wiretap investigation, it is so complex that it is unreasonable to expect adequate  
18 preparation for pretrial proceedings or for the trial itself prior to December 13, 2022.

19 d) Counsel for defendants believe that failure to grant the above-requested  
20 continuance would deny them the reasonable time necessary for effective preparation, taking into  
21 account the exercise of due diligence.

22 e) No defendant has invoked his/her speedy trial rights since the inception of the  
23 case.

24 f) The government does not object to the continuance.

25 g) Based on the above-stated findings, the ends of justice served by continuing the  
26 case as requested outweigh the interest of the public and the defendants in a trial within the  
27 original date prescribed by the Speedy Trial Act.

28 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,

et seq., within which trial must commence, the time period of September 19, 2022 to December 13, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(ii), (iv) [Local Codes T2 and T4] because it results from a continuance granted by the Court at defendants' request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendants in a speedy trial.

4. Counsel for ALMA ADRIANA MORA MADRIGAL and the government agree that for purposes of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of September 19, 2022, to December 13, 2022, inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(3) because ALMA ADRIANA MORA MADRIGAL's whereabouts are unknown and her whereabouts cannot be determined by due diligence. On June 9, 2021, defendant ALMA ADRIANA MORA MADRIGAL was ordered to remain on Pretrial Release conditions previously ordered in the Central District of California. Dkt. 13. On December 21, 2021, the Honorable Jeremy D. Peterson signed a Pretrial Release Violation Petition and issued a bench warrant for ALMA ADRIANA MORA MADRIGAL. The Petition alleged that:

On December 16, 2021, the supervising pretrial services officer in the Central District of California notified Pretrial Services in the Eastern District of California that all attempts to locate the defendant have been unsuccessful, which included a home visit. On December 17, 2021, this officer contacted defense counsel, who advised the defendant has broken off contact with their office and they are unable to reach the defendant. All efforts to locate the defendant have been unsuccessful and the defendant's current whereabouts is unknown.

Consequently, the government and counsel for ALMA ADRIANA MORA MADRIGAL agree and ask the Court to find that defendant be considered unavailable because her whereabouts are unknown and her whereabouts cannot be determined by due diligence.

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5. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: September 13, 2022

PHILLIP A. TALBERT  
United States Attorney

/s/ ANGELA L. SCOTT  
ANGELA L. SCOTT  
Assistant United States Attorney

Dated: September 13, 2022

/s/ RYAN ROTH per email  
authorization  
RYAN ROTH  
Counsel for Defendant  
LEOPOLDO GONZALEZ, JR.

Dated: September 13, 2022

/s/ KELLY BABINEAU per  
email authorization  
KELLY BABINEAU  
Counsel for Defendant  
VICTOR MANUEL  
VELAZQUEZ

Dated: September 13, 2022

/s/ ETAN ZAITSU per email  
authorization  
ETAN ZAITSU  
Counsel for Defendant  
ERASMO ZARATE  
SOLORZANO

Dated: September 13, 2022

/s/ CLEMENTE M. JIMENEZ  
per email authorization  
CLEMENTE M. JIMENEZ  
Counsel for Defendant  
ESTELA ACEVEDO

1 Dated: September 13, 2022

/s/ JENNIFER MOUZIS per  
email authorization

JENNIFER MOUZIS  
Counsel for Defendant  
DIANA CERVANTES

5 Dated: September 13, 2022

/s/ DINA LEE SANTOS per  
email authorization

DINA LEE SANTOS  
Counsel for Defendant  
JOSE GENARO VARGAS-  
RAMIREZ

9 Dated: September 13, 2022

/s/ CHRISTINA ANN-MARIE  
DIEDOARDO per email  
authorization

CHRISTINA ANN-MARIE  
DIEDOARDO  
Counsel for Defendant  
ALMA ADRIANA MORA  
MADRIGAL

15 Dated: September 13, 2022

/s/ JESSE GARCIA per email  
authorization

JESSE GARCIA  
Counsel for Defendant  
HUMBERTO PIMENTEL  
CARANZA

19 Dated: September 13, 2022

/s/ TASHA CHALFANT per  
email authorization

TASHA CHALFANT  
Counsel for Defendant  
FERNANDO CARDENAS

23 **ORDER**

24 IT IS SO ORDERED.

26 Dated: September 14, 2022

  
UNITED STATES DISTRICT JUDGE